



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: MIDDCO, Inc.
File: B-235587
Date: September 6, 1989

DIGEST

Protest concerning award of contract on a sole-source basis is dismissed as untimely when filed more than 10 working days after protester knew or should have known basis of protest.

DECISION

MIDDCO, Inc., protests the United States Army Missile Command's (MICOM) award of a contract for technical support services (contract No. DAAH01-89-C-0433) to Logicon, Inc., on a sole-source basis. MIDDCO protests that a sole-source award to Logicon was not justified, because MIDDCO is also qualified to perform the services and should have been solicited. MIDDCO also asserts that the procurement should have been set aside exclusively for small business competition. In addition, MIDDCO contends that there are several deficiencies in the statement of work contained in the contract with Logicon.

We dismiss the protest.

The protested contract is for performing nuclear surety/safety support activities for the Follow-on To LANCE (FOTL) Project Office; the contractor's analysis will provide the required nuclear surety/safety inputs to complete development of the FOTL weapon system specification for incorporation into a subsequent request for proposals for a full-scale development contract. MIDDCO first contacted the FOTL Project Office on February 13, 1989, to express interest in performing the contract. However, the FOTL Project Office, with assistance from the United States Army Nuclear and Chemical Agency, conducted a market survey and determined that there were only two firms--Logicon and TRW--known to be qualified to perform all of the required services. The FOTL Project Office ultimately considered MIDDCO ineligible for award, because the agency determined that MIDDCO was capable of performing some but not all of

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the technical support services necessary to accomplish the nuclear surety/safety analysis.

On March 29, MIDDCO contacted a contracting activity official and informed him of a possible teaming agreement. MIDDCO was in the process of working out in order to be able to perform all of the work required by the FOTL Project Office. During that conversation, the contracting official stated that his office had decided to pursue a sole-source contract with Logicon.

Subsequently, MIDDCO contacted the Army and a Small and Disadvantaged Business Utilization Specialist to get further information concerning the solicitation and the Army's justification for a sole-source award. On April 21, MIDDCO again contacted the FOTL Project Office and was informed that the contract had, in fact, been awarded to Logicon on a sole-source basis on April 19.

By letter of April 29, MIDDCO protested to MICOM that a sole-source award was not justified, because:

"MIDDCO is qualified to perform a major fraction of the work and, depending on the [scope of work], may be qualified for other tasks as well."

The Army denied MIDDCO's protest by letter of May 15, and MIDDCO filed its protest in our Office on May 19.

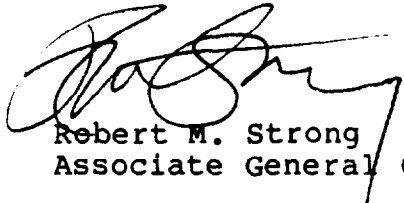
Insofar as MIDDCO is protesting that the sole-source award to Logicon was not proper and that the procurement should have been set aside for small businesses, we find the protest to be untimely. Our Bid Protest Regulations require that a protest be filed not later than 10 working days after the protester knew or should have known its basis for protest. 4 C.F.R. § 21.2(a)(2) (1988). Here, MIDDCO was told by a contracting activity official on March 29 that "his office had decided to pursue a sole source contract with Logicon." Moreover, MIDDCO itself acknowledges that it was aware of MICOM's intent to pursue a sole-source procurement before award was made. However, MIDDCO did not protest to the contracting agency until 1 month later. As the protest to the Army was filed more than 10 days after MIDDCO knew its basis for protest, the agency-level protest was untimely and the subsequent protest to our Office will not be considered. See 4 C.F.R. § 21.2(a)(3); Brandon Applied Sys., Inc., 57 Comp. Gen. 140 (1977), 77-2 CPD ¶ 486; Storage Technology Corp., B-194549, May 9, 1980, 80-1 CPD ¶ 333.

MIDDCO contends that its protest should be considered timely because the firm did not know its basis for protest until May 15 when MIDDCO received a copy of the justification issued by the Army to support the sole-source award. We do not agree. The basis for MIDDCO's protest is that the Army's sole-source award to Logicon was improper. It should have been clear to MIDDCO on March 29 that the Army was going to make award to Logicon on a sole-source basis. In fact, MIDDCO protested to the Army on that basis on April 29, well before MIDDCO received the justification. See Metrox Inc., B-235618, Aug. 21, 1989, 89-2 CPD ¶ ____.

MIDDCO also argues that there are many deficiencies in the justification that were not apparent until MIDDCO received the document under its Freedom of Information Act request. However, as that document is merely the written embodiment of the Army's determination to exclude MIDDCO from consideration for this contract, which is in fact the real basis for MIDDCO's protest, we will not consider this argument further.

Finally, MIDDCO contends that the statement of work in Logicon's contract is deficient in several respects. MIDDCO does not, however, argue that it would have been considered capable of performing the required services and thus eligible for award but for the alleged deficiencies. Accordingly, as MIDDCO was not one of the firms considered eligible for award, and as MIDDCO did not timely protest its exclusion from consideration for award, we will not consider this basis of protest further. See Engine & Generator Rebuilders, 65 Comp. Gen. 191 (1986), 86-1 CPD ¶ 27.

The protest is dismissed.


Robert M. Strong
Associate General Counsel